

1 Header Information**1.1 General Information**

Title	Brandau Road Water Main Replacement Phase 1		
Description	Brandau Road Water Main Replacement Phase 1		
Preview Date	06-JUL-2016 13:02:51	Open Date	06-JUL-2016 13:02:51
Close Date	29-JUL-2016 11:00:00	Award Date	Not Specified
Time Zone	Central Time	Buyer	EDWARDS, KEVIN
Quote Style	Sealed	Email	Kevin.Edwards@nashville.gov
Outcome	Contract Purchase Agreement		

1.2 Terms

Effective Start Date	Not Specified	Effective End Date	Not Specified
Ship-To Address	1 METRO SITE LOCATION 1590 1 METRO SITE LOCATION 1590 REFERENCE ADDR IN SOLICITATION United States	Bill-To Address	BILL TO: METRO PAYMENT SERVICES BILL TO: METRO PAYMENT SERVICES PO BOX 196301 NASHVILLE, TN 372196301 United States
Payment Terms	Net 30	Carrier	
FOB	Delivery	Freight Terms	Supplier Prepaid
Currency	USD (US Dollar)	Price Precision	Any
Total Agreement Amount (USD)	Not Specified		

1.3 Requirements

ITB Solicitation (Selection) Method
<p>Invitation to Bid</p> <p>Pursuant to § 4.12.030 M.C.L., this solicitation document serves as the written determination of the Purchasing Agent, that this solicitation is an invitation to bid. Awards, if made, shall be to the lowest, responsive and responsible, evaluated offeror.</p> <p>There may be one or more amendments to this solicitation. Solicitation amendments are included as updates to the original solicitation. It is the offeror's responsibility to remain informed on all solicitation amendments and submit the solicitation response incorporating all amendments.</p> <p>Any alterations to the document(s) provided by the Metropolitan Government of Nashville and Davidson County (Metro) and submitted by the offeror other than completing questions, worksheets, or forms may result in your response being deemed nonresponsive, cancellation of any subsequent award, or any other legal remedies available to Metro.</p> <p>Offers to Metro online solicitations are required to be submitted within the iSupplier online environment unless otherwise stated. Hard copy offers will not be considered except as required by law.</p> <p>Any response to this solicitation is a formal waiver of any claims of confidentiality regardless of what may be stated, printed, or implied in the submission and/or attachments submitted. All information is made a Public Record after an award is made.</p> <p>The only official position of Metro is found within this solicitation document including answers provided in response to questions raised. The online discussion tool within iSupplier is the appropriate tool for all questions or communications concerning this solicitation.</p> <p>.....</p> <p>Target Value .</p> <p>Type No Response Required</p>

<p>Solicitation Objective</p> <p>The objective of this solicitation is to enter into a contract for a capital project.</p> <p>.....</p> <p>Target Value .</p> <p>Type No Response Required</p>
<p>Solicitation Scope</p> <p>Scope Summary</p> <p>One-time capital project for the installation of approximately 4,900 linear feet of 10-inch water main and appurtenances within the roadway along Brandau Road from near Central Pike to Hoggett Ford Road.</p> <p>.....</p> <p>Target Value .</p> <p>Type No Response Required</p> <p>Scope Detail</p> <p>One-time capital project for the installation of approximately 4,900 linear feet of 10-inch water main and appurtenances within the roadway along Brandau Road from near Central Pike to Hoggett Ford Road.</p> <p>The total number of days from Notice to Proceed to Project Completion is 120 calendar days.</p> <p>* See attached Drawings, Specifications, and Vicinity Sketch for more details.</p> <p>.....</p> <p>Target Value .</p> <p>Type No Response Required</p> <p>Bid Form and Alternate Paving Bid Form</p> <p>Complete the attached Bid Form and Alternate Paving Bid Form and submit these completed spreadsheets with your response. The Bid Form will be used for evaluation purposes to determine an intent to award while the Alternate Paving Bid Form is for informational purposes only with the option to be utilized anytime over the life of the project. You will also be required to enter your totals from these two forms on the Lines tab of this solicitation.</p> <p>Please note that the SBE/SDV cost incentive will only apply towards your Base Bid Amount from the Bid Form that is also listed on Line 1 of the Lines Tab. To enter your dollar value and percent value of SBE/SDV participation, click the pencil icon on Line 1 of the Lines Tab to access the SBE/SDV attributes section.</p> <p>An award, if made, will go to the lowest responsive and responsible Offeror based on their Total Bid Amount from the Bid Form.</p> <p>.....</p> <p>Target Value Have you attached your completed Bid Form and Alternate Paving Bid Form?</p> <p>.....</p> <p>Provide your answer below</p> <p>.....</p> <p>As indicated in the Inquiries Section below, all questions that are specific to the solicitation shall be submitted via iSupplier Online Discussion on or before Friday, July 22 at 3:00 p.m. central time. Questions will be answered formally via Amendment to the solicitation soon after the deadline for submitting questions.</p> <p>You may contact Kevin Edwards at (615) 862-6632 or kevin.edwards@nashville.gov with questions regarding iSupplier or you may email iSupplier@nashville.gov . All offerors are encouraged to sign in to the iSupplier system as soon as possible to view the solicitation and ensure all login information is correct.</p> <p>Finally, please have your offer loaded in the iSupplier system well in advance of the deadline for submission of offers to avoid any last minute functionality issues. While Metro makes every attempt to assist suppliers with entering their offers, there is not sufficient time to trouble shoot functionality issues within one hour of the deadline for submission of offers.</p>

Solicitation Scope
<p>.....</p> <p>Target Value .</p> <p>Type No Response Required</p>
Solicitation Acceptance
<p>Offeror must indicate acceptance of the final version of this solicitation as amended.</p> <p>Any exceptions taken to this solicitation must be submitted through the online discussion feature of the system by the date and time shown for inquiry submittal. If an offeror takes exception to this solicitation after the inquiry submittal date and time, their submission may be deemed nonresponsive.</p> <p>.....</p> <p>Target Value Accept Final Version of Solicitation</p> <p>.....</p> <p>Provide your answer below</p>
Acceptance of Metro Contract
<p>Offeror must indicate that they have read and accept the attached Metro Contract.</p> <p>.....</p> <p>Target Value Accept Attached Metro Contract</p> <p>.....</p> <p>Provide your answer below</p>
Construction Clauses
<p>LICENSING REQUIREMENTS</p> <p>Offeror must comply with all of the provisions of the Contractors Licensing Act of 1976 of the State of Tennessee, the same being set out in Tennessee Code Annotated, 62-6-101 et seq., and Section 62-6-119 as amended by 1997 Tennessee Public Act No. 153. Said Act and amendments are incorporated herein by reference. The prime contractor is required to be licensed whenever the total project is \$25,000 or more. In addition, contractors and subcontractor's performing the mechanical, plumbing, HVAC, electrical (including geothermal heating and cooling), and roofing must be licensed when their total portion is \$25,000 or more; with the exception of masonry subcontractors, and they are not required to supply license information until the total portion is \$100,000 (total cost includes materials and labor). Offeror must comply with all specific licensure requirements of the Tennessee Department of Environment and Conservations (TDEC).</p> <p>Failure to include the required licensure information will result in an offer being deemed nonresponsive. Acceptable State of Tennessee license classification(s) for the project include those identified below.</p> <p>.....</p> <p>Target Value .</p> <p>Type No Response Required</p> <p>MU - Municipal and Utility Construction</p> <p>.....</p> <p>Target Value .</p> <p>Type No Response Required</p>

Construction Clauses
Enter your Tennessee Contractor's License Classification(s) and any Sub-Classification(s) if you are not licensed at the full classification(s). The procuring Metro department will make the determination if this sub-classification(s) is appropriate for the solicitation. If they deem the sub-classification not appropriate for the solicitation, then the offer will be deemed nonresponsive.
..... Target Value Provide your answer below
Enter your Tennessee Contractor's License ID Number.
..... Target Value Provide your answer below
Enter your Tennessee Contractor's License Expiration Date.
..... Target Value Provide your answer below
Enter your Tennessee Contractor's License Monetary Limit.
..... Target Value Provide your answer below
Enter required licensing information for all subcontractors including name, classification(s), number, expiration date, and monetary limit.
..... Target Value

<p>Construction Clauses</p> <p>Provide your answer below</p>
<p>Stormwater Management</p> <p>All activities performed under this solicitation and resulting contract/PO shall be conducted in full compliance with Metro Code of Law §§ 15.64 et al (Stormwater Management) including §§ 15.64.205 (http://www.nashville.gov/Water-Services/Pollution-Prevention/Illicit-Discharge-Ordinance.aspx).</p> <p>This requirement pertains to Unlawful/Prohibited Discharges to the Metro Storm Sewer System/Community Waters. It prohibits the discharge of "wastewater" and "non-stormwater" discharges such as wash water, process wastewater, etc. into the Municipal Storm Sewer System (MS4) or into Community Waters. Any questions relating these provisions should be routed to the Metro Water Services NPDES Office at (615) 880-2420. This requirement shall apply to all Metro construction projects in the service area, including areas outside Davidson County.</p> <p>.....</p> <p>Target Value .</p> <p>Type No Response Required</p> <p>Contractor shall bear responsibility for all of Contractor's actions that cause Metro Water Services to violate project regulatory permits or Federal, State or local environmental regulations. Such permits and regulations may include, but are not limited to:</p> <ul style="list-style-type: none"> • U.S. Army Corps of Engineers 404 Permits • TDEC Aquatic Resource Alteration Permits • TDEC Construction General Permits • Any State or Federal permits/approvals related to Threatened and Endangered Species • Metro Individual NPDES permits • Metro Code § 15.64.205 - Metro Illicit Discharge Ordinance • Metro Stormwater Management Manual <p>Contractor's responsibility shall include, but not be limited to, payment of all fines, assessments and/or civil penalties incurred due to Contractor's work, actions, design or installation and payment for any mitigation measures required due to the violation and cleanup associated with any violation.</p> <p>.....</p> <p>Target Value .</p> <p>Type No Response Required</p> <p>Bonds</p> <p>A Payment and Performance Bond is required for a contract award exceeding \$100,000. The awarded firm shall submit a Payment Bond and a Performance Bond as a condition precedent to a contract or purchase order. Documentation of bonds shall be in a format acceptable to Metro.</p> <p>.....</p> <p>Target Value .</p> <p>Type No Response Required</p> <p>Liquidated Damages</p> <p>This construction project is subject to liquidated damages. Metro will suffer financial loss, in addition to any increased costs of completion of the project, if the project is not substantially complete within 110 calendar days and finally complete within 10 calendar days after substantial completion.</p> <p>Contractor and Contractor's Surety shall be liable for and shall pay for the loss of use. This payment is for liquidated damages and should not be considered a penalty. Contractor shall pay Metro \$1000 for each calendar day exceeding the substantial completion date. Contractor shall pay Metro \$1000 for each</p>

<p>Construction Clauses</p> <p>calendar day exceeding the final completion date.</p> <p>.....</p> <p>Target Value .</p> <p>Type No Response Required</p>
<p>Construction Workforce Development</p> <p>The Nashville Career Advancement Center (NCAC), a member of the Nashville Construction Readiness Partnership (NCRP), is an entity operated by the Middle Tennessee Workforce Board (MTWB), through an agreement with Metro. NCAC will serve as a required point of contact in the identification of available workers for construction projects where contractors will actively hire for both new and replacement employment opportunities. The goal of NCRP is to ensure that Metro residents and low-income Metro residents are considered first for both new and replacement employment opportunities on Metro's construction projects.</p> <p>Working with the State of Tennessee, NCRP provides a searchable database to identify available skilled and unskilled construction workers. Employees searching for construction work will enter their information into this database. Offerors for this solicitation may search for needed workers by job classification and by residency.</p> <p>The State's Jobs4TN website is www.jobs4tn.gov. Information on database use and helpdesk contact information can be found at NCAC's website: www.NCACworkforce.org on the "Nashville Construction Readiness Partnership" page.</p> <p>.....</p> <p>Type No Response Required</p>
<p>Sustainability</p> <p>It is the policy of Metro to finance, plan, design, construct, maintain, and decommission its facilities and buildings to be sustainable.</p> <p>.....</p> <p>Target Value .</p> <p>Type No Response Required</p>
<p>Allowances/Contingencies</p> <p>These amounts are determined and identified by Metro and should not be included in the SBE/SDV participation amounts submitted with your offer.</p> <p>.....</p> <p>Target Value .</p> <p>Type No Response Required</p>
<p>Drug Free Workplace Affidavit</p> <p>As a principal officer or agent, duly authorized to act on behalf of the firm submitting this offer, I submit this Affidavit pursuant to T.C.A. 50-9-114, stating that this firm has a drug-free workplace program that complies with Title 50, Chapter 9, of the Tennessee Code Annotated and we are in compliance with T.C.A. 50-9-114.</p> <p>Further, this firm, by its employment policy, standards, and practices, operates a drug-free workplace program or other drug or alcohol testing program similar, but no less stringent, than Metro's Drug-Free Workplace policy.</p> <p>By so stating, the offeror agrees that failure to satisfy this requirement is a material breach of contract and is subject to all legal claims and damages, termination of contract, and debarment for three years. Does your firm comply? If you select "No", your response may be deemed nonresponsive.</p> <p>.....</p> <p>Target Value Yes, I so affirm.</p>

<p>Construction Clauses</p> <p>.....</p> <p>Circle one from the response values below: Yes, I so affirm. No and nonresponsive</p>
<p>Standard Solicitation Requirements</p> <p>Inquiries All inquiries must be submitted by Friday, July 22 at 3:00 p.m. central time using the online discussions feature of the iSupplier system. Offerors must clearly understand that the only official answer or position of Metro will be the one stated in writing by Division of Procurement staff.</p> <p>.....</p> <p>Target Value . Type No Response Required</p>
<p>Pre-Offer Meeting There will be no Pre-Offer Meeting for this solicitation.</p> <p>.....</p> <p>Target Value . Type No Response Required</p>
<p>Accurate Information Failure to provide complete and accurate information in an offer to this solicitation may result in your offer being deemed nonresponsive. Metro may institute debarment proceedings against the offeror and/or terminate any contract or purchase order that has been awarded based on inaccurate information.</p> <p>.....</p> <p>Target Value . Type No Response Required</p>
<p>Extraneous Information Offers should be brief and concise. Information provided beyond the requirements described in this solicitation may be considered extraneous and as a result discarded.</p> <p>.....</p> <p>Target Value . Type No Response Required</p>
<p>Minor Irregularities Metro reserves the right to waive minor irregularities in offers, provided that such action is in the best interest of Metro. Any such waiver shall not modify any remaining solicitation requirements or excuse the offeror from full compliance with the solicitation specifications and other contract requirements if the offeror is awarded a contract.</p> <p>.....</p> <p>Target Value . Type No Response Required</p>
<p>Ambiguity, Conflict or Other Errors in the Solicitation Offeror is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error in this solicitation prior to submitting their offer, or it shall be waived. Claims of ambiguity after submission of the offer shall not serve as grounds for a protest. If an offeror discovers any ambiguity, conflict, discrepancy, omission, or other error in the solicitation, they shall immediately request modification or clarification using the online discussion feature of iSupplier. Required modifications or clarifications will be issued by solicitation amendment.</p> <p>.....</p> <p>Target Value . Type No Response Required</p>
<p>Validity of Offers All offers shall be valid for a period of one-hundred and twenty (120) days from the closing date of the</p>

<p>Standard Solicitation Requirements</p> <p>solicitation unless another timeframe is agreed to by all parties. Submission of an offer does not afford rights to the offeror nor obligate Metro in any manner.</p> <p>.....</p> <p>Target Value .</p> <p>Type No Response Required</p> <p>Offer and Presentation Costs</p> <p>Metro will not be liable for any costs incurred by an offeror in the preparation of its response to a solicitation, nor for the presentation of its offer and/or participation in any clarifications, discussions, negotiations, or protests.</p> <p>.....</p> <p>Target Value .</p> <p>Type No Response Required</p> <p>Rejection of Offers</p> <p>Metro reserves the right to accept or reject, in whole or in part, any offers submitted. The failure of an offeror to promptly supply information in connection with, or with respect to, reasonable requests may be grounds for a determination of non-responsibility.</p> <p>.....</p> <p>Target Value .</p> <p>Type No Response Required</p> <p>Subcontractors/Subconsultants</p> <p>Offeror must enter <u>all</u> subcontractors/subconsultants on the appropriate form provided as part of the solicitation. The form should identify any Small and/or Service-Disabled Veteran (SBE/SDV) owned and Minority and/or Woman (MWBE) owned subcontractors/subconsultants and/or suppliers who will perform a portion of this project. The file should be attached to your response in Excel format and named "Subcontractor/Subconsultant Form".</p> <p>.....</p> <p>Target Value Have you attached your Subcontractor Form? (Place "N/A" in the white box if no subs are being utilized)</p> <p>.....</p> <p>Provide your answer below</p> <p>.....</p> <p>Assistance to Small (SBE) and/or Service-Disabled Veteran (SDV) Owned Businesses</p> <p>The Metro Procurement Code (§ 4.44) and Regulations (§§ R4.44.020.04) provide options for the Purchasing Agent to maximize the participation and performance of Metro approved SBE/SDV businesses.</p> <p>Assistance is provided to offerors who are SBE/SDV, or who need assistance in locating potential SBE/SDV subcontractors or suppliers. For assistance, offerors are encouraged to contact the BAO by email at BAO@Nashville.gov or call the BAO at (615) 880-2814. For more information and the forms go to the following website:</p> <p>http://www.nashville.gov/Finance/Procurement/Minority-and-Women-Business-Assistance/SMWBE-Lists-and-Forms.aspx.</p> <p>If the Offeror is a SBE/SDV business, Metro considers the work the SBE/SDV firm commits to self-perform. If the work is subcontracted or otherwise procured, only the work performed by a Metro approved SBE/SDV subcontractor or supplier may be considered for the purposes of award incentive. All SBE/SDV businesses included in offers must be registered online with Metro and approved by the BAO prior to the solicitation closing date.</p> <p>.....</p> <p>Target Value .</p>
--

<p>Standard Solicitation Requirements</p> <p>Type No Response Required</p> <p>Several ways that SBE/SDV participation may be promoted in individual solicitations are described below.</p> <p>Cost Incentive - The Metro Procurement Code (§ 4.44) and Regulations (§§ R4.44.020.04) provide options for the Purchasing Agent to provide a cost incentive to maximize SBE/SDV participation. If this solicitation includes a cost incentive for the participation of approved SBE/SDV business, the methodology for evaluating the SBE/SDV participation is described in the regulations found at http://www.nashville.gov/Portals/0/SiteContent/Finance/Purchasing/Regulations%2020140206.pdf</p> <p>Set-Aside - Some solicitations are the result of an SBE/SDV set-aside. In those cases only approved SBE/SDV firms may submit an offer. The solicitation will state in the opening description if it is an SBE/SDV set-aside solicitation.</p> <p>Threshold - If the solicitation has a SBE/SDV threshold, only offers that meet the established threshold will be eligible for SBE/SDV cost incentives. Incentive consideration, if included, is calculated on a pro rata basis for those offers in excess of the established threshold.</p> <p>Requirement - If the solicitation states a required SBE/SDV participation level, then only those offerors committing to achieve or exceed the established amount will be considered responsive to the solicitation. The solicitation will not contain an SBE/SDV cost incentive.</p> <p>.....</p> <p>Target Value .</p> <p>Type No Response Required</p> <p>SBE/SDV Participation and Misrepresentation</p> <p>Offerors must acknowledge that they understand the SBE/SDV participation expectations described in the next paragraph.</p> <p>There is a 15% threshold for SBE/SDV participation in this solicitation. Only offers that meet the established threshold will be eligible for SBE/SDV cost incentives.</p> <p>Offeror also acknowledges that they understand the consequences of failing to comply with their SBE/SDV participation commitments. If Contractor fails to comply with their SBE/SDV businesses participation commitments, or it is determined that their SBE/SDV status or the SBE/SDV status of any subcontractor/subconsultant/supplier, is shown to be false; Metro may terminate the Contract and charge Contractor for any costs incurred by Metro as a result of the misrepresentation. Misrepresentation may result in debarment.</p> <p>Contractor shall enter payments to SBE/SDV and MWBE subcontractors/subconsultants/suppliers into iSupplier as instructed by Metro. Failure to do so may impact payments to Contractor.</p> <p>.....</p> <p>Target Value Acknowledge Participation Expectations and Consequences of Misrepresentation</p> <p>.....</p> <p>Provide your answer below</p> <p>.....</p> <p>Americans with Disabilities Act</p> <p>Contractor shall ensure Metro that all services provided through this resulting contract shall be completed in full compliance with the 2010 Americans with Disabilities Act ("ADA") enacted by law on March 15, 2012 and adopted by Metro. Contractor will ensure that participants at public meetings with disabilities will have communication access that is equally effective as that provided to people without disabilities. Information shall be made available in accessible formats, and auxiliary aids and services shall be provided upon the reasonable request of a qualified person with a disability.</p> <p>.....</p> <p>Target Value .</p> <p>Type No Response Required</p>

Standard Solicitation Requirements
Contractor Personnel Requirements Subsequent to submission of an offer and prior to award of a contract, key personnel identified in the offer shall not be changed without the approval of Metro. Any changes in key personnel without Metro approval may result in the offer being rejected and not considered for award.
..... Target Value . Type No Response Required
Unauthorized Work The successful offeror shall not begin work until Metro issues a Notice to Proceed or Purchase Order. Any unauthorized work shall be deemed non-compensable and the offeror will have no recourse against Metro.
..... Target Value . Type No Response Required
Good Faith Efforts
Procurement Nondiscrimination Program (PNP) Requirements The consideration and contact of minority-owned and/or woman-owned business enterprises (MWBE) with a significant presence in the Nashville MSA, is required for a responsive offer. Offerors must complete and attach to their response the Statements of Interested, Notified, and Successful Subcontractors Form indicating that written notice has been delivered to at least three (3) MWBEs in an appropriate field of work. Offerors should attach the written responses from the three (3) MWBEs. MWBE firms included in offers must be registered with Metro and certification received by BAO prior to the solicitation closing date. Failure to comply with PNP requirements may result in the offer being deemed nonresponsive. In the event an offeror submits to use a Metro approved MWBE, a letter of intent signed by both parties must be submitted to BAO by the end of the second business day following issuance of the intent to award notification. For PNP information and forms, go to http://www.nashville.gov/Finance/Procurement/Minority-and-Women-Business-Assistance/SMWBE-Lists-and-Forms.aspx . Attach the PNP Form and outreach documentation to your response as one PDF document named "PNP Documentation".
..... Target Value Have you attached your PNP Documentation? Provide your answer below
I/We have made efforts to include MWBE's, certified by certifying entities recognized by the Metropolitan Government, in the procurement process and to ensure that businesses are not discriminated against on the basis of race, ethnicity or gender. Failure to select "Yes" may result in your response being deemed nonresponsive.
..... Target Value Yes, we have. Circle one from the response values below: Yes, we have. No, and are non-responsive.
I/We have delivered written notice to three available MWBEs certified by certifying entities recognized by

<p>Good Faith Efforts</p> <p>the Metropolitan Government for each potential subcontracting or supply category in the Contract AND all potential subcontractors or vendors which requested information on the Contract. Failure to select "Yes" may result in your response being deemed nonresponsive.</p> <p>.....</p> <p>Target Value Yes, we have.</p> <p>.....</p> <p>Circle one from the response values below: Yes, we have. No, and are non-responsive.</p> <p>I/We have provided all potential subcontractors or vendors with adequate and timely information as to the plans and specifications of this project as well as information necessary to provide a bid or quote as well as and the last date and time for receipt of price quotations. Failure to select "Yes" may result in your response being deemed nonresponsive.</p> <p>.....</p> <p>Target Value Yes, we have.</p> <p>.....</p> <p>Circle one from the response values below: Yes, we have. No, and are non-responsive.</p>
<p>Additionally, we have made the following Good Faith Efforts to include MWBEs as subcontractors or joint venturers on this project.</p> <p>.....</p> <p>Target Value .</p> <p>Type No Response Required</p> <p>I/We have attended a special meeting called to inform business and individuals of subcontracting or supply opportunities.</p> <p>.....</p> <p>Type Optional</p> <p>.....</p> <p>Circle one from the response values below: Yes No</p> <p>I/We have, in accordance with normal industry practices, divided the contract into economically feasible segments that can be performed by a MWBE.</p> <p>.....</p> <p>Type Optional</p> <p>.....</p> <p>Circle one from the response values below: Yes No</p> <p>I/We have provided a written explanation for rejection of any potential subcontractor or vendor to the BAO, included the name of the firm proposed to be awarded the subcontract or supply agreement, where price competitiveness is not the reason for rejection.</p> <p>.....</p> <p>Type Optional</p> <p>.....</p> <p>Circle one from the response values below: Yes No</p> <p>I/We have actively solicited, through sending letters or initiating personal contact, MWBEs in all feasible and appropriate categories providing subcontracting opportunities for the contract under consideration.</p>

Good Faith Efforts
<p>.....</p> <p>Type Optional</p> <p>.....</p> <p>Circle one from the response values below:</p> <p>Yes</p> <p>No</p>
<p>I/We have utilized the services of available community organizations and associations, contractors' groups, and trade associations known to publicize contracting and procurement opportunities, for the purpose of obtaining assistance in the contacting and recruitment of MWBEs for the Metropolitan Government contract under consideration.</p> <p>.....</p> <p>Type Optional</p> <p>.....</p> <p>Circle one from the response values below:</p> <p>Yes</p> <p>No</p>
<p>I/We have advertised in publications of general circulation in the Nashville Metropolitan Statistical Area ("MSA"), trade publications and other media owned by, or otherwise focused or marketed to MWBEs, and the advertisement identifies and describes the specific subcontracting or other opportunity in reasonable detail.</p> <p>.....</p> <p>Type Optional</p> <p>.....</p> <p>Circle one from the response values below:</p> <p>Yes</p> <p>No</p>
<p>I/We have conducted discussions with interested MWBEs in good faith, and provided the same willingness to assist MWBEs as has been extended to any other similarly situated subcontractor.</p> <p>.....</p> <p>Type Optional</p> <p>.....</p> <p>Circle one from the response values below:</p> <p>Yes</p> <p>No</p>
<p>I/We have taken steps to ensure that all labor supervisors, superintendents, and other on-site supervisory personnel are aware of and carry out the obligation to maintain a nondiscriminatory work environment, free of harassment, intimidation, and coercion at all construction sites, offices and other facilities to which employees are assigned to work.</p> <p>.....</p> <p>Type Optional</p> <p>.....</p> <p>Circle one from the response values below:</p> <p>Yes</p> <p>No</p>
Insurance Requirements
<p>Any offeror receiving an award shall be required to provide a Certificate of Insurance prior to execution of a contract.</p> <p>The "Description" section must read as follows: Metropolitan Government of Nashville and Davidson County, its officials, officers, employees, and volunteers are named as additional insureds per general liability additional insured endorsement and automobile liability additional insured endorsement.</p> <p>In the "Certificate Holder" section it must read as follows: Purchasing Agent, Metropolitan Government of Nashville and Davidson County, Metro Courthouse, Nashville, TN 37201.</p> <p>The following insurance(s) shall be required:</p>

Insurance Requirements
..... Target Value . Type No Response Required
· General Liability Insurance in the amount of one million (\$1,000,000.00) dollars (if the supplier will be making on-site delivery)
Target Value . Type No Response Required
· Automobile Liability Insurance in the amount of one million (\$1,000,000.00) dollars (if supplier will be making on-site deliveries)
Target Value . Type No Response Required
· Worker's Compensation Insurance with statutory limits required by the State of Tennessee or other applicable laws and Employer's Liability Insurance with limits of no less than one hundred thousand (\$100,000.00) dollars, as required by the laws of Tennessee. (Workman's Comp Insurance is not required for companies with fewer than five (5) employees.)
Target Value . Type No Response Required
Affidavits
Enter your City Target Value Provide your answer below
Enter your County Target Value Provide your answer below
Enter your State Target Value Provide your answer below

Affidavits
Enter your Zip Code Target Value Provide your answer below
Affiant states that Offeror has all applicable licenses, including business licenses. Affiant also states that offeror is current on its payment of all applicable gross receipt taxes and personal property taxes. M.C.L. 4.20.065 Target Value Yes, I so affirm. Circle one from the response values below: Yes, I so affirm. No and are non-responsive.
Affiant affirms that by its employment policy, standards and practices, it does not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age or sex, and are not in violation of, and will not violate, any applicable laws concerning the employment of individuals with disabilities. M.C.L. 4.28.020 Target Value Yes, I so affirm. Circle one from the response values below: Yes, I so affirm. No and are non-responsive.
Affiant affirms that in consideration of the privilege to submit offers in response to this solicitation, we hereby consent, covenant, and agree as follows: To adopt the policies of the Metropolitan Government relating to equal opportunity in contracting on projects and contracts funded, in whole or in part, with funds of the Metropolitan Government; - To attempt certain good faith efforts to solicit Minority-owned and Woman-owned business participation on projects and contracts in addition to regular and customary solicitation efforts; - Not to otherwise engage in discriminatory conduct; - To provide a discrimination-free working environment; - That this Covenant of Nondiscrimination shall be continuing in nature and shall remain in full force and effect without interruption; - That the Covenant of Nondiscrimination shall be incorporated by reference into any contract or portion thereof which the Supplier may hereafter obtain; and - That the failure of the Supplier to satisfactorily discharge any of the promises of nondiscrimination as made and set forth herein shall constitute a material breach of contract. M.C.L. 4.46.070 Target Value Yes, I so affirm Circle one from the response values below: Yes, I so affirm No, and am nonresponsive
Affiant affirms that neither the offeror nor utilized temporary staffing service employs any person who is not a legally authorized to work in the United States. Any contractor who knowingly violates the

Affidavits
provisions of this section is subject to debarment or suspension. M.C.L. 4.40.060
.....
Target Value Yes, I so affirm.
.....
Circle one from the response values below: Yes, I so affirm. No and are non-responsive.
It is a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a Metro contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. After first being duly sworn according to law, the undersigned Affiant states that the Offeror has not retained anyone in violation of the foregoing. M.C.L. 4.48.080
.....
Target Value Yes, I so affirm.
.....
Circle one from the response values below: Yes, I so affirm. No and are non-responsive.
Iran Divestment Act Affidavit
By submission of this offer and in response to the solicitation, offeror(s) and each person signing on behalf of offeror(s) affirm, under penalty of perjury, that to the best of their knowledge and belief, neither the offeror(s), nor proposed subcontractors, subconsultants, partners and any joint venturers, are on the list created pursuant to the Tennessee Code Annotated § 12-12-106 (Iran Divestment Act).
.....
Target Value Yes, I so affirm.
.....
Circle one from the response values below: Yes, I so affirm. We cannot so affirm. Therefore, we attach a signed statement setting forth in detail the reasons for non-compliance.
And Further Affiant Sayeth Not:
Name of Company Officer:
.....
Target Value .
.....
Provide your answer below
.....
Title:
.....
Target Value .
.....
Provide your answer below
.....

Affidavits
<i>The provision of false information is a material breach.</i>
.....
Target Value Acknowledged.
.....
Circle one from the response values below: Acknowledged. Our offer is non-responsive
<i>If the principal officer cannot so attest, the offer will be determined non-responsive.</i>
.....
Target Value .
Type No Response Required

1.4 Attachments

Name	Data Type	Description
Drawings	File	
Specifications	File	
Vicinity Sketch	File	
Bid Form	File	Complete the attached Bid Form and return with your submitted response.
Alternate Paving Bid Form	File	Complete the attached Alternate Paving Bid Form and return with your submitted response.
Subcontractor Form	File	Enter all subcontractors performing work on this project. Submit Excel spreadsheet back with response.

1.5 Response Rules

This negotiation is governed by all the rules displayed below.

- ☐ Negotiation is restricted to invited suppliers
- ☐ Suppliers are allowed to view other suppliers' contract terms, notes and attachments
- ☐ Suppliers are allowed to respond to selected lines
- ☒ Suppliers are allowed to provide multiple responses
- ☐ Buyer may close the negotiation before the Close Date
- ☒ Buyer may manually extend the negotiation while it is open

2 Price Schedule

2.1 Line Information

Display Rank As **1,2,3...**
 Ranking **Price Only**
 Cost Factors **None**

Line	Item, Rev / Job	Target Quantity	Unit	Unit Price	Amount	Bid Minimum Release Amount
1 Base Bid Amount from Bid Form for Brandau Road Water Main Replacement Phase 1		1	Dollars			
2 Allowance and Contingency Items Total from Bid Form for Brandau Road Water Main Replacement Phase 1		1	Dollars			
3 Subtotal from Alternate Paving Bid Form for Brandau Road Water Main Replacement Phase 1		1	Dollars			

2.2 Line Details

2.2.1 Line 1 Base Bid Amount from Bid Form for Brandau Road Water Main Replacement Phase 1

Category **72100000** Start Price (USD) **Not Specified**
 Shopping Category **Building construction and support and maintenance and repair services** Target Price (USD) **Not Specified**
 Minimum Release Amount (USD) **Not Specified**
 Estimated Total Amount (USD) **Not Specified**

General

Description	Target Value	Response Value
SBE/SDV Amount not Self Performed	\$	
SBE/SDV Amount Self Performed	\$	
Total SBE/SDV Amount	\$	

Description	Target Value	Response Value
SBE/SDV Percentage not Self Performed	%	
SBE/SDV Percentage Self Performed	%	
Total SBE/SDV Percentage	%	

2.2.2 Line 2 Allowance and Contingency Items Total from Bid Form for Brandau Road Water Main Replacement Phase 1

Category	72100000	Start Price (USD)	Not Specified
Shopping Category	Building construction and support and maintenance and repair services	Target Price (USD)	35,000
Minimum Release Amount (USD)	Not Specified		
Estimated Total Amount (USD)	Not Specified		

2.2.3 Line 3 Subtotal from Alternate Paving Bid Form for Brandau Road Water Main Replacement Phase 1

Category	72100000	Start Price (USD)	Not Specified
Shopping Category	Building construction and support and maintenance and repair services	Target Price (USD)	Not Specified
Minimum Release Amount (USD)	Not Specified		
Estimated Total Amount (USD)	Not Specified		

Contract Terms and Conditions

Table of Contents

Terms and Conditions.....	23
1. Construction Contract	23
1.1. Heading	23
2. THE PARTIES HEREBY AGREE TO THE FOLLOWING TERMS AND CONDITIONS:	23
2.1. Duties and Responsibilities	23
2.2. Representations of CONTRACTOR	23
2.3. Stormwater Management	24
3. CONTRACT TERM	24
3.1. Contract Term	24
4. COMPENSATION	25
4.1. Compensation for Construction	25
4.2. Other Fees	27
4.3. Escalation/De-escalation	27
4.4. Payment Methodology	27
4.5. Electronic Payment	27
4.6. Invoicing Requirements	28
5. TERMINATION	28
5.1. Breach	28
5.2. Lack of Funding	28
5.3. Notice	28
6. NONDISCRIMINATION	28
6.1. METRO's Nondiscrimination Policy	28
6.2. Nondiscrimination Requirement	28
6.3. Procurement Nondiscrimination Program Requirement	29
6.4. Covenant of Nondiscrimination	29
6.5. Americans with Disabilities Act (ADA)	29
7. INSURANCE	29
7.1. Proof of Insurance	29
7.2. General Liability Insurance	29
7.3. Automobile Liability Insurance	29
7.4. Worker's Compensation Insurance (if applicable)	30
7.5. Other Insurance Requirements	30
7.6. Such insurance shall:	30
8. CONSTRUCTION SPECIFIC TERMS AND CONDITIONS	31
8.1. Intent and Interpretation	31
8.2. CONTRACTOR's Performance	32
8.3. Time for CONTRACTOR's Performance and Liquidated Damages	32
8.4. Change Orders	33
8.5. Cease and Desist Order	33
8.6. Hazardous Materials and Waste	33
8.7. Subcontractors	34
8.8. Discovering and Correcting Defective or Incomplete Work	34
8.9. METRO's Right to Suspend CONTRACTOR's Performance	34

8.11. Surety Bonds	35
8.12. Project Records	35
8.13. Metropolitan Government Property	35
9. GENERAL TERMS AND CONDITIONS	36
9.1. Taxes	36
9.2. Warranty	36
9.3. Software License	36
9.4. Confidentiality	36
9.5. Information Ownership	37
9.6. Information Security Breach Notification	37
9.7. Virus Representation and Warranty	37
9.8. Copyright, Trademark, Service Mark, or Patent Infringement	38
9.9. Maintenance of Records	38
9.10. Monitoring	39
9.11. METRO Property	39
9.12. Modification of Contract	40
9.13. Partnership/Joint Venture	40
9.14. Waiver	40
9.15. Employment	40
9.16. Compliance with Laws	40
9.17. Taxes and Licensure	40
9.18. Ethical Standards	40
9.19. Indemnification and Hold Harmless	41
9.20. Attorney Fees	41
9.21. Assignment--Consent Required	41
9.22. Entire Contract	42
9.23. Force Majeure	42
9.24. Governing Law	42
9.25. Venue	42
9.26. Severability	42

Terms and Conditions

1. Construction Contract

1.1. Heading

This contract is initiated by and between **The Metropolitan Government of Nashville and Davidson County** ("METRO") and **Enter Legal Name** ("CONTRACTOR") located at **Enter Address, City, ST ZIP**. This Contract consists of the following documents:

- *Any properly executed contract amendment (most recent with first priority),*
- *This document, including exhibits,*
- *The solicitation documentation for RFQ#941597 and affidavit(s) (all made a part of this contract by reference),*
- *Purchase Orders (and PO Changes),*
- *CONTRACTOR's response to the solicitation,*
- *Procurement Nondiscrimination Program forms (incorporated by reference).*

In the event of conflicting provisions, all documents shall be construed in the order listed above.

2. THE PARTIES HEREBY AGREE TO THE FOLLOWING TERMS AND CONDITIONS:

2.1. Duties and Responsibilities

CONTRACTOR agrees to provide the goods and/or services as briefly described below and more fully defined in the solicitation.

One-time capital project for the installation of approximately 4,900 linear feet of 10-inch water main and appurtenances within the roadway along Brandau Road from near Central Pike to Hoggett Ford Road.

2.2. Representations of CONTRACTOR

In order to induce METRO to execute this Contract and recognizing that METRO is relying thereon, CONTRACTOR, by executing this Contract, makes the following express representations to METRO:

- CONTRACTOR is fully qualified to perform the work on this project and has, and shall maintain, any and all licenses, permits, or other authorizations necessary to perform the work on this project;
- CONTRACTOR has become familiar with the project site and the local conditions under which the project is to be constructed and operated;
- CONTRACTOR has received, reviewed, and carefully examined all of the documents attached to this Contract and has found them to be generally sufficient to indicate and convey understanding of the terms and conditions for constructing and completing the project;
- CONTRACTOR agrees to notify METRO immediately of all conflicts, errors, ambiguities, or discrepancies that are discovered in the attachments to this Contract, including, but not limited to the Plans and Specifications;

and,

- CONTRACTOR had access to the site for examinations, explorations, tests, and studies prior to submitting an offer, and relied exclusively upon CONTRACTOR's own estimates and investigations and other data which was necessary for full and complete information upon which CONTRACTOR's offer was based; in addition to the representations contained in CONTRACTOR's offer.

2.3. Stormwater Management

All activities performed under this Contract shall be conducted in full compliance with Metro Code of Law §§ 15.64 et al (Stormwater Management) including §§ 15.64.205

(<http://www.nashville.gov/Water-Services/Pollution-Prevention/Illicit-Discharge-Ordinance.aspx>).

This requirement pertains to Unlawful/Prohibited Discharges to the METRO Storm Sewer System/Community Waters. It prohibits the discharge of "wastewater" and "non-stormwater" discharges such as wash water, process wastewater, etc. into the Municipal Storm Sewer System (MS4) or into Community Waters. Any questions relating to these provisions should be routed to the METRO Water Services (MWS) NPDES Office at (615) 880-2420. This requirement shall apply to all METRO construction projects in the service area, including areas outside Davidson County.

CONTRACTOR shall bear responsibility for all of CONTRACTOR's actions that cause MWS to violate project regulatory permits or Federal, State, or local environmental regulations. Such permits and regulations may include, but are not limited to:

- U.S. Army Corps of Engineers 404 Permits
- TDEC Aquatic Resource Alteration Permits
- TDEC Construction General Permits
- Any State or Federal permits/approvals related to Threatened and Endangered Species
- METRO Individual NPDES permits
- METRO Code §15.64.205 - Metro Illicit Discharge Ordinance
- METRO Stormwater Management Manual

CONTRACTOR's responsibility shall include, but not be limited to, payment of all fines, assessments and/or civil penalties incurred due to CONTRACTOR's work, actions, design, or installation and payment for any mitigation measures required due to the violation and cleanup associated with any violation.

3. CONTRACT TERM

3.1. Contract Term

The Contract Term will begin on the date this Contract is approved by all required parties and filed in the Metropolitan Clerk's Office. The Contract Term will end at Project Completion or when METRO ceases to use any Products and/or Services purchased, licensed, leased, rented, or otherwise acquired from CONTRACTOR. Those terms which by their nature are intended to survive the expiration of this Contract shall so survive.

This Contract may be extended by Contract Amendment. The option to extend may be exercised by and at the discretion of the Purchasing Agent. However, in no event shall the term of this Contract exceed sixty (60) months

from the date of filing with the Metropolitan Clerk's Office.

4. COMPENSATION

4.1. Compensation for Construction

METRO shall pay and CONTRACTOR shall accept, as full and complete payment for CONTRACTOR'S timely performance of all its obligations hereunder, the Contract Price of \$ **TBD**. The Contract Price shall not be modified except as provided for herein. CONTRACTOR agrees that the Contract Price is subject to upward or downward revision to reflect variation in expected quantities of unit priced work, use of allowances, increases and decreases in the scope of work and other changes contemplated by and made in accordance with the terms of this Contract. Notwithstanding any other provision of this Contract, CONTRACTOR is not guaranteed to earn any minimum amount of compensation. Rather, the total amount of compensation CONTRACTOR may earn under this Contract shall be based on the total number of authorized and approved units of work performed.

CONTRACTOR shall prepare and present to METRO the CONTRACTOR's Schedule of Values, including a complete detailed breakdown apportioning the Contract Price among the different elements of the project, for purposes of periodic and final payment. CONTRACTOR's Schedule of Values shall be presented in a format acceptable to METRO, with such detail and supporting information as METRO requests. CONTRACTOR shall not imbalance its Schedule of Values nor artificially inflate any element thereof. Violation of this provision by CONTRACTOR shall constitute a material breach of this Contract. CONTRACTOR's Schedule of Values will be utilized for CONTRACTOR's Payment Requests but shall only be so utilized after it has been approved in writing by METRO.

METRO shall pay the Contract Price to CONTRACTOR in accordance with the procedures set forth in this Paragraph. On or before the tenth (10th) day of each month after commencement of performance, but no more frequently than once monthly, CONTRACTOR may submit a Payment Request for the period ending on the last day of the prior month. Said Payment Request shall be submitted in the format requested by METRO.

Any request for payment on account of stored materials or equipment (if offsite, storage is in a bonded warehouse approved in writing by METRO), must be accompanied by written proof that METRO will receive free and clear title to such materials or equipment once payment is made, a bill of materials, and that they are fully insured by CONTRACTOR against loss or damage.

As a condition precedent to payment, CONTRACTOR shall also furnish to METRO properly executed waivers of liens or other claims, in a form acceptable to METRO, from all subcontractors, materialmen, suppliers or others having lien or other claim rights, wherein said subcontractors, materialmen, suppliers or others having lien or other claim rights shall acknowledge receipt of all sums due pursuant to all prior Payment Requests and waive and relinquish any liens, lien rights or other claims relating to the project. Each Payment Request shall be signed by CONTRACTOR and shall constitute CONTRACTOR's representation that the quantity of work has reached the level for which payment is requested, that the work has been properly installed or performed in strict compliance with this Contract and that CONTRACTOR knows of no reason why payment should not be made as requested. The submission by CONTRACTOR of a Payment Request also constitutes an affirmative representation and warranty that all work for which METRO has previously paid is free and clear of any lien, claim or other encumbrance of any person whatsoever. Furthermore, CONTRACTOR warrants and represents that, upon payment of the Payment Request, title to all work, materials and equipment included in such payment shall be vested in METRO. METRO shall make every attempt to make payment to CONTRACTOR within thirty (30) days following the submission of a Payment Request, in form acceptable to METRO. The amount of each such payment shall be less such amounts, if any, otherwise owing by CONTRACTOR to METRO or which METRO shall have the right to withhold as authorized by this Contract. The Architect/Engineers approval of CONTRACTOR's Payment

Requests shall not preclude METRO from exercising its rights as set forth below. In the event METRO rejects a Payment Request for failing to comply with the requirements of this Contract, payment shall not be due until thirty (30) days following correction of all noted defects and resubmission by CONTRACTOR. If the Payment Request is rejected for any bonafide reason, the thirty (30) day period shall start over when an acceptable Payment Request is received.

When payment is received from METRO, CONTRACTOR shall within fourteen (14) calendar days pay all subcontractors, materialmen, laborers and suppliers the amounts they are due for the work covered by such payment. In the event METRO becomes informed that CONTRACTOR has not paid a subcontractor, materialman, laborer or supplier as provided herein, METRO shall have the right, but not the duty, to issue future checks and payments otherwise due hereunder naming CONTRACTOR and any such subcontractor, materialman, laborer, or supplier as joint payees. Such joint check procedure, if employed by METRO, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit METRO to repeat the procedure in the future. However, such necessary practices may be considered as performance issues on future solicitations.

Neither payment to CONTRACTOR, utilization of the project for any purpose by METRO, nor any other act or omission by METRO shall be interpreted or construed as an acceptance of any work of CONTRACTOR not strictly in compliance with this Contract.

Notwithstanding any other provision of this Contract, METRO shall have the right to refuse to make any payment and, if necessary, may demand the return of a portion or all of the amount previously paid to CONTRACTOR due to:

- The quality of a portion, or all, of CONTRACTOR's work not being in accordance with the requirements of this Contract;
- The quantity of CONTRACTOR's work not being as represented in CONTRACTOR's Payment Request, or otherwise;
- CONTRACTOR's rate of progress being such that, in METRO's opinion, substantial or final completion, or both, may be inexcusably delayed;
- CONTRACTOR's failure to use Contract funds, previously paid CONTRACTOR by METRO, to pay CONTRACTOR'S project-related obligations including, but not limited to, subcontractors, laborers, and material and equipment suppliers;
- Claims made, pending or known against METRO or its property in relation to this Contract or the acts or omissions of CONTRACTOR or any of its subcontractors;
- Loss caused by CONTRACTOR; and,
- CONTRACTOR's failure or refusal to perform any of its obligations to METRO.

In the event that METRO makes written demand upon CONTRACTOR for amounts previously paid by METRO as contemplated in this Contract, CONTRACTOR shall promptly comply with such demand.

If within forty-five (45) days from the date payment to CONTRACTOR is due, METRO, without cause or basis hereunder, fails to pay CONTRACTOR any amount then due and payable to CONTRACTOR, CONTRACTOR shall have the right to cease work until receipt of proper payment after first providing ten (10) days written notice to METRO of CONTRACTOR's intent to cease work.

When substantial completion has been achieved, CONTRACTOR shall notify METRO in writing and also shall furnish a listing of those matters yet to be finished. METRO or its designee will thereupon conduct an inspection to confirm that the work is in fact substantially complete. Upon its confirmation that CONTRACTOR's work is substantially complete, METRO will so notify CONTRACTOR in writing, setting forth the date of substantial completion.

If METRO finds that CONTRACTOR's work is not substantially complete, and is required to repeat all, or any

portion, of its substantial completion inspection, CONTRACTOR shall bear the cost of such repeat inspection(s) which cost may be deducted by METRO from any payment then or thereafter due to CONTRACTOR.

Upon final completion, CONTRACTOR shall notify METRO thereof in writing. Thereupon, METRO or its designee will perform a final inspection of the project. If METRO confirms that the project is complete, in full accordance with this Contract and that the CONTRACTOR has performed all of its obligations to METRO hereunder, METRO will notify CONTRACTOR. If METRO finds that the project is not finally complete and is required to repeat all or any part of its final inspection of the project, CONTRACTOR shall bear the cost of such repeat inspection(s), with those costs deducted from CONTRACTOR's final payment.

Prior to being entitled to receive final payment, and as a condition precedent thereto, CONTRACTOR shall furnish METRO, in the form and manner required by METRO:

- An affidavit that all of CONTRACTOR's obligations to subcontractors, laborers, equipment and material suppliers and other third parties in connection with the project have been paid or otherwise satisfied;
- Separate releases of claims or claim waivers from each subcontractor, lower tier subcontractor, laborer, supplier or other person or entity who has or might have a claim against METRO or the payment bond;
- Consent(s) of surety to final payment; and,
- All product warranties, operating manuals, instruction manuals and project documents, or expressly required by METRO, as part of or prior to project close-out.

METRO shall, subject to its rights set forth in this Contract, make every attempt to make final payment of all sums due CONTRACTOR within forty-five (45) days after notifying CONTRACTOR of the achievement of final completion.

4.2. Other Fees

There will be no other charges or fees for the performance of this Contract. METRO will make reasonable efforts to make payments within 30 days of receipt of invoice but in any event shall make payment within 60 days. METRO will make reasonable efforts to make payments to Small Businesses within 15 days of receipt of invoice but in any event shall make payment within 60 days.

4.3. Escalation/De-escalation

This Contract is not eligible for annual escalation/de-escalation adjustments.

4.4. Payment Methodology

Payment in accordance with the terms and conditions of this Contract shall constitute the entire compensation due CONTRACTOR for all goods and/or services provided under this Contract.

METRO will compensate CONTRACTOR in accordance with Exhibit A of this Contract. Subject to these payment terms and conditions, CONTRACTOR shall be paid for delivered/performed products and/or services properly authorized by METRO in accordance with this Contract. Compensation shall be contingent upon the satisfactory provision of the products and/or services as determined by METRO.

4.5. Electronic Payment

All payments shall be effectuated by ACH (Automated Clearing House).

4.6. Invoicing Requirements

CONTRACTOR shall invoice METRO no more frequently than once a month or for the satisfactorily and accurately delivered/performed products and/or services, whichever is less frequent. Invoices shall detail this Contract Number accompanied by any necessary supporting documentation. CONTRACTOR shall submit all invoices no later than ninety (90) days after the products and/or services have been delivered/performed.

Payment of an invoice by METRO shall not waive METRO's rights of revocation of acceptance due to non-conformity or the difficulty of discovery of the non-conformance. Such revocation of acceptance shall occur within a reasonable time after METRO discovers or should have discovered the non-conforming product and/or service but prior to any substantial change in condition of the products and/or services caused by METRO.

5. TERMINATION

5.1. Breach

Should CONTRACTOR fail to fulfill in a timely and proper manner its obligations under this Contract or if it should violate any of the terms of this Contract, METRO shall identify the breach and CONTRACTOR shall cure the performance within thirty (30) days. If CONTRACTOR fails to satisfactorily provide cure, METRO shall have the right to immediately terminate this Contract. Such termination shall not relieve CONTRACTOR of any liability to METRO for damages sustained by virtue of any breach by CONTRACTOR.

5.2. Lack of Funding

Should funding for this Contract be discontinued, METRO shall have the right to terminate this Contract immediately upon written notice to CONTRACTOR.

5.3. Notice

METRO may terminate this Contract at any time upon thirty (30) days written notice to CONTRACTOR. Should METRO terminate this Contract, CONTRACTOR shall immediately cease work and deliver to METRO, within thirty (30) days, all completed or partially completed satisfactory work, and METRO shall determine and pay to CONTRACTOR the amount due for satisfactory work.

6. NONDISCRIMINATION

6.1. METRO's Nondiscrimination Policy

It is the policy of METRO not to discriminate on the basis of race, creed, color, national origin, age, sex, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities.

6.2. Nondiscrimination Requirement

No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission

or access to, or be discriminated against in treatment or employment in METRO's contracted programs or activities, on the grounds of race, creed, color, national origin, age, sex, disability, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with METRO or in the employment practices of METRO's CONTRACTORS. **CONTRACTOR certifies and warrants that it will comply with this nondiscrimination requirement.** Accordingly, all offerors entering into contracts with METRO shall, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

6.3. Procurement Nondiscrimination Program Requirement

The consideration and contact of minority-owned and/or woman-owned business enterprises is required for a responsive offer to most solicitations. The provision of the Procurement Nondiscrimination Program documents shall be part of each applicable solicitation response and incorporated herein by reference. CONTRACTOR agrees to comply with the Procurement Nondiscrimination Program, if applicable, in the execution of this Contract.

6.4. Covenant of Nondiscrimination

All offerors have committed to the Covenant of Nondiscrimination when registering with METRO to do business. To review this document, go to METRO's website.

6.5. Americans with Disabilities Act (ADA)

CONTRACTOR assures METRO that all services provided shall be completed in full compliance with the Americans with Disabilities Act ("ADA") 2010 ADA Standards for Accessible Design, enacted by law March 15, 2012, as has been adopted by METRO. CONTRACTOR will ensure that participants with disabilities will have communication access that is equally effective as that provided to people without disabilities. Information shall be made available in accessible formats, and auxiliary aids and services shall be provided upon the reasonable request of a qualified person with a disability.

7. INSURANCE

7.1. Proof of Insurance

During the term of this Contract, for any and all awards, CONTRACTOR shall, at its sole expense, obtain and maintain in full force and effect for the duration of this Contract, including any extension(s), the types and amounts of insurance identified below. Proof of insurance shall be required naming METRO as additional insured and identifying either the project name, RFQ, Purchase Order, or Contract number on the ACORD document.

7.2. General Liability Insurance

In the amount of one million (\$1,000,000.00) dollars.

7.3. Automobile Liability Insurance

In the amount of one million (\$1,000,000.00) dollars (if CONTRACTOR will be making on-site deliveries)

7.4. Worker's Compensation Insurance (if applicable)

CONTRACTOR shall maintain workers' compensation insurance with statutory limits required by the State of Tennessee or other applicable laws and Employer's Liability Insurance with limits of no less than one hundred thousand (\$100,000.00) dollars, as required by the laws of Tennessee (Not required for companies with fewer than five (5) employees).

7.5. Other Insurance Requirements

Prior to commencement of services, CONTRACTOR shall furnish METRO with original certificates and amendatory endorsements effecting coverage required by this section and provide that such insurance shall not be cancelled, allowed to expire, or be materially reduced in coverage except on 30 days' prior written notice to:

**DEPARTMENT OF LAW
INSURANCE AND RISK MANAGEMENT
METROPOLITAN COURTHOUSE, SUITE 108
PO BOX 196300
NASHVILLE, TN 37219-6300**

Provide certified copies of endorsements and policies if requested by METRO in lieu of or in addition to certificates of insurance.

Replace certificates, policies, and/or endorsements for any such insurance expiring prior to completion of services.

Maintain such insurance from the time services commence until services are completed. Failure to maintain or renew coverage and to provide evidence of renewal may be treated by METRO as a material breach of this Contract.

Said insurance shall be with an insurer licensed to do business in Tennessee and having A.M. Best Company ratings of no less than A-. Modification of this standard may be considered upon appeal to the METRO Director of Risk Management Services.

Require all subcontractors to maintain during the term of this Contract, Commercial General Liability insurance, Business Automobile Liability insurance, and Worker's Compensation/ Employers Liability insurance (unless subcontractor's employees are covered by CONTRACTOR's insurance) in the same manner as specified for CONTRACTOR. CONTRACTOR shall require subcontractor's to have all necessary insurance and maintain the subcontractor's certificates of insurance.

Any deductibles and/or self-insured retentions greater than \$10,000.00 must be disclosed to and approved by METRO **prior to the commencement of services.**

If CONTRACTOR has or obtains primary and excess policy(ies), there shall be no gap between the limits of the primary policy and the deductible features of the excess policies.

7.6. Such insurance shall:

Contain or be endorsed to contain a provision that includes METRO, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of work or operations performed by or on behalf of CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations.

The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds. For any claims related to this Contract, CONTRACTOR's insurance coverage shall be primary insurance with respects to METRO, its officers, officials, employees, and volunteers. Any insurance or self-insurance programs covering METRO, its officials, officers, employees, and volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.

Automotive Liability insurance shall include vehicles owned, hired, and/or non-owned. Said insurance shall include coverage for loading and unloading hazards. Insurance shall contain or be endorsed to contain a provision that includes METRO, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of CONTRACTOR.

CONTRACTOR shall maintain Workers' Compensation insurance (if applicable) with statutory limits as required by the State of Tennessee or other applicable laws and Employers' Liability insurance. CONTRACTOR shall require each of its subcontractors to provide Workers' Compensation for all of the latter's employees to be engaged in such work unless such employees are covered by CONTRACTOR's Workers' Compensation insurance coverage.

8. CONSTRUCTION SPECIFIC TERMS AND CONDITIONS

8.1. Intent and Interpretation

With respect to the intent and interpretation of this Contract, METRO and CONTRACTOR agree as follows:

Unless specifically stated to be the responsibility of METRO, anything that may be required, implied, or inferred by the documents which make up this Contract, or any one or more of them, shall be provided by CONTRACTOR for the Contract Price.

Nothing contained in this Contract shall create, or be interpreted to create, privity or any other relationship whatsoever between METRO and any entity except CONTRACTOR.

Whenever a word, term or phrase is used in this Contract, it shall be interpreted or construed first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

The words "include", "includes", or "including", as used in this Contract shall be deemed to be followed by the phrase, "without limitation".

The specification herein of any act, failure, refusal, omission, event, occurrence, or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence, or condition shall be deemed not to constitute a material breach of this Contract.

CONTRACTOR shall have a continuing duty to read, examine, review, compare, and contrast each of the documents which make up this Contract, shop drawings and other submittals and shall give written notice to METRO of any conflict, ambiguity, error, or omission which CONTRACTOR may find with respect to these documents before proceeding with the affected work. The express or implied approval of METRO of any shop drawings or other submittals shall not relieve CONTRACTOR of the continuing duties imposed hereby, nor shall any such approval be evidence of CONTRACTOR's compliance with this Contract. METRO has requested the Architect/Engineer to only prepare documents for the project, including the plans and specifications for the project, which are accurate, adequate, consistent, coordinated, and sufficient for construction.

In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up this Contract, the following shall control:

- As between figures given on plans and scaled measurements, the figures shall govern.
- As between large scale plans and small scale plans, the large scale plans shall govern.

- As between plans and specifications, the requirements of the specifications shall govern.
- As between this Contract and the plans or specifications, this Contract shall govern.
- Discrepancies between the multiplication of units of work and unit prices will be resolved in favor of the unit prices. When there are discrepancies between the indicated sum of any column of figures and the correct sum thereof, METRO has the right, at its option, to reject the offer or to accept the correct sum. Discrepancies between words and figures will be resolved in favor of the words.

8.2. CONTRACTOR's Performance

CONTRACTOR shall perform all of the work required, implied or reasonably inferable from this Contract including, but not limited to, the following:

- Construction of the project;
- Construction services consisting of the provision and the prompt payment therefor, of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling or other utilities required for construction and all necessary building permits and other permits required for the construction of the project, including any use and occupancy or similar permit(s) that may be required before the completed project may be put in use;
- The furnishing and maintenance of any required surety bonds and insurance; and,
- The creation and submission to METRO, in a format acceptable to METRO, all construction documents, including but not limited to, manuals, operating instructions, warranties, guarantees, maintenance instructions, and detailed and comprehensive as-built drawings depicting all as-built construction. Said as-built information shall be submitted to METRO upon final completion of the project and receipt of same by METRO shall be a condition precedent to final payment to CONTRACTOR.

8.3. Time for CONTRACTOR's Performance and Liquidated Damages

CONTRACTOR shall commence the performance of this Contract within ten (10) calendar days after the date of issuance to CONTRACTOR of a notice to proceed by METRO; however, in no event shall the notice to proceed be issued or performance commence prior to the Effective Date of this Contract as hereafter set out. Once timely commenced, CONTRACTOR shall diligently continue its performance to and until final completion of the project. CONTRACTOR shall accomplish substantial completion of the project within one hundred ten (110) calendar days after the date that the notice to proceed is issued. CONTRACTOR shall accomplish final completion of the project within ten (10) calendar days after the date that substantial completion is accomplished.

The term substantial completion as used herein shall mean that point at which the project is at a level of completion in strict compliance with this Contract such that METRO or its designee can enjoy beneficial use or occupancy and can use or operate it in all respects for its intended purpose. Partial use or occupancy of the project shall not result in the project being deemed substantially complete and such partial use or occupancy shall not be evidence of substantial completion. The term final completion as used herein shall mean that point at which the project is 100% complete and in conformance with this Contract.

Guarantees and equipment warranties required by this Contract shall commence on the date of substantial completion.

METRO will suffer financial loss, in addition to any increased costs of completion of the project, if the project is not substantially complete within the time allowed by this Contract. CONTRACTOR and CONTRACTOR's Surety shall be liable for and shall pay to METRO as liquidated damages to compensate for the loss of use of the project for

the period of delay, and not as penalty, the sum of one thousand dollars (\$1000) for each calendar day of delay until the project is substantially complete. Such liquidated damages do not include any additional costs of this project caused by delay (such as additional costs of construction, additional architect or engineer fees, or other liquidated costs) and CONTRACTOR, in addition to liquidated damages for the cost of delay itself, shall be liable to METRO for same. CONTRACTOR agrees that the time and the amount established by this Contract for liquidated damages are reasonable.

METRO will suffer financial loss, in addition to any increased costs of completion of the project, if CONTRACTOR fails to achieve final completion within the time period set forth in this Contract. CONTRACTOR and CONTRACTOR's Surety shall be liable for and shall pay to METRO as liquidated damages to compensate for the losses and damages suffered by any delay, and not as penalty, the sum of one thousand dollars (\$1000) for each calendar day of delay until the project is finally complete. Such liquidated damages do not include any additional costs of this project caused by delay (such as additional costs of construction, additional Architect/Engineer fees, or other liquidated costs) and CONTRACTOR, in addition to liquidated damages for the cost of delay itself, shall be liable to METRO for same.

All limitations of time set forth herein are material and are of the essence of this Contract.

8.4. Change Orders

Changes to the work within the general scope of this Contract may be ordered by Change Order, Change Authorization, or Field Authorization and must be approved by METRO. In addition, METRO may order minor changes--those that do not involve a change in the Contract Price and do not involve a change in the time for CONTRACTOR's performance--that METRO deems necessary for performance of and are consistent with the intent of this Contract. CONTRACTOR shall proceed with any such change(s).

8.5. Cease and Desist Order

In the event CONTRACTOR fails or refuses to perform the work as required herein, METRO may instruct CONTRACTOR to cease and desist from performing further work in whole or in part. Upon receipt of such instruction, CONTRACTOR shall immediately cease and desist as instructed by METRO and shall not proceed further until the cause for METRO's instruction has been corrected, or no longer exists, or METRO instructs that the work may resume. In the event METRO issues such instruction to cease and desist and in the further event that CONTRACTOR fails and refuses within seven (7) days of receipt of same to provide adequate assurances to METRO that the cause for such instruction will be eliminated or corrected, then METRO shall have the right, but not the obligation, to carry out the work with its own force or with the forces of another contractor, and CONTRACTOR shall be fully responsible and liable for the costs of performing such work. The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies METRO may have against CONTRACTOR.

8.6. Hazardous Materials and Waste

Unless otherwise specified in the plans and specifications, it is the responsibility of METRO to remove and dispose of pre-existing hazardous materials or waste that are at the project site. Hazardous materials and waste include asbestos, polychlorinated biphenyl ("PCB"), petroleum, and radioactive material. It is the responsibility of CONTRACTOR to immediately notify METRO as soon as any hazardous materials or waste are discovered.

8.7. Subcontractors

Upon execution of this Contract, CONTRACTOR shall identify to METRO, in writing, any subcontractor not previously identified on the project. METRO shall, in writing, state any objection METRO may have to one or more of such subcontractors. CONTRACTOR shall not enter into a subcontract with an intended subcontractor with reference to whom METRO objects. Should a proposed subcontractor that was listed when CONTRACTOR's offer was submitted (this does not apply to subcontractors listed after that time) be disapproved, and CONTRACTOR provides proof that the replacement subcontractor will charge CONTRACTOR a higher price than the disapproved subcontractor, then Contract Price may be adjusted at a rate equal to the difference between the price charged CONTRACTOR by the new subcontractor and the price charged by the disapproved subcontractor.

Failure of METRO to object to the subcontractor shall not impose on METRO any liability or responsibility for the performance or character of said subcontractor.

All subcontracts shall afford CONTRACTOR rights against the subcontractor that correspond to those rights afforded to METRO against CONTRACTOR herein, including those rights of contract termination as set forth in this Contract.

8.8. Discovering and Correcting Defective or Incomplete Work

- In the event that CONTRACTOR covers, conceals, or obscures its work in violation of this Contract or in violation of a directive from METRO, such work shall be uncovered and displayed for METRO's inspection upon request and shall be reworked at no cost in time or money to METRO.
- If any of the work is covered, concealed, or obscured in a manner not covered by the preceding paragraph, it shall, if directed by METRO, be uncovered and displayed for METRO. If the uncovered work conforms strictly to this Contract, the costs incurred by CONTRACTOR to uncover and subsequently replace such work, shall be borne by METRO. Otherwise, such costs shall be borne by CONTRACTOR.
- CONTRACTOR shall, at no cost in time or money to METRO, correct work rejected by METRO as defective or failing to conform to this Contract. Additionally, CONTRACTOR shall reimburse METRO for all testing, inspections, and other expense incurred as a result thereof.
- In addition to its warranty obligations set forth elsewhere herein, CONTRACTOR shall be specifically obligated to correct any and all defective or nonconforming work without additional compensation for a period of twelve (12) months following final completion upon written notice from METRO.
- METRO may, but shall in no event be required to, choose to accept defective or nonconforming work. In such event, the contract price shall be reduced by the greater of (1) the reasonable costs of removing and correcting the defective or nonconforming work, and (2) the difference between the fair market value of the project as constructed and the fair market value of the project had it not been constructed in such a manner as to include defective or nonconforming work. If the remaining portion of the unpaid contract price, if any, is insufficient to compensate METRO for the acceptance of the defective or nonconforming work, CONTRACTOR shall, upon written demand from METRO, pay METRO such remaining compensation for accepting defective or nonconforming work.

8.9. METRO's Right to Suspend CONTRACTOR's Performance

- METRO shall have the right at any time to direct CONTRACTOR to suspend the performance, or any designated part thereof, for any reason whatsoever, or without reason. If any such suspension is directed by

METRO, CONTRACTOR shall immediately comply with same and shall demobilize as directed by METRO.

- In the event METRO directs a suspension of performance under this Contract, through no fault of CONTRACTOR, METRO shall pay CONTRACTOR as full compensation for such suspension CONTRACTOR's reasonable costs, actually incurred and paid, of:
 - o demobilization and remobilization, including such costs paid to subcontractors;
 - o preserving and protecting work in place; and
 - o storage of materials or equipment purchased for the project, including insurance thereon.

8.11. Surety Bonds

CONTRACTOR shall furnish separate performance and payment bonds to METRO. Each bond shall set forth a penal sum in an amount not less than the Contract Price. Each bond furnished by CONTRACTOR shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by change orders approved by METRO, the penal sum of both the performance bond and the payment bond shall be deemed adjusted by like amount. The performance and payment bonds furnished by CONTRACTOR shall be in a form suitable to METRO and shall be executed by a surety, or sureties, licensed to do business in Tennessee and reasonably acceptable to METRO. Bonds shall be accompanied by a power of attorney indicating that the person executing the bond is doing so on behalf of the surety. The power of attorney shall have been conferred upon the attorney-in-fact prior to the date of the bond. The power of attorney shall show the date of appointment of the attorney-in-fact and that the appointment and powers have not been revoked and remain in effect.

8.12. Project Records

All documents relating in any manner whatsoever to the project, or any designated portion thereof, which are in the possession of CONTRACTOR, or any subcontractor of CONTRACTOR shall be made available to METRO for inspection and copying upon written request by METRO. Furthermore, said documents shall be made available, upon request by METRO, to any state, federal or other regulatory authority and any such authority may review, inspect and copy such records. Said records include, but are not limited to, all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the project, its design and its construction. Said records expressly include those documents reflecting the cost of construction by CONTRACTOR, including all subcontracts and payroll records of CONTRACTOR and subcontractors.

CONTRACTOR shall maintain and protect these documents for no less than four (4) years after final completion of the project or for a longer period of time as may be required by law or good construction practice. CONTRACTOR shall also retain, for no less than four (4) years after final completion of the project, all working papers and other documents utilized by CONTRACTOR in preparing the offer for this Contract. In the event of litigation, said working papers and other documents shall be produced in accordance with applicable laws and/or rules of discovery. Breach of the provisions of this paragraph is a material breach of this Contract.

8.13. Metropolitan Government Property

Any Metropolitan Government property, including but not limited to books, records and equipment, that is in Contractor's possession shall be maintained by Contractor in good condition and repair, and shall be returned to

Metropolitan Government by Contractor upon termination of the contract. All goods, documents, records, and other work product and property produced during the performance of this contract are deemed to be Metropolitan Government property.

9. GENERAL TERMS AND CONDITIONS

9.1. Taxes

METRO shall not be responsible for any taxes that are imposed on CONTRACTOR. Furthermore, CONTRACTOR understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to METRO.

9.2. Warranty

CONTRACTOR warrants that for a period of one year from date of delivery and/or installation, whichever is later, the goods provided, including software, shall be free of any defects that interfere with or prohibit the use of the goods for the purposes for which they were obtained.

During the warranty period, METRO may, at its option, request that CONTRACTOR repair or replace any defective goods, by written notice to CONTRACTOR. In that event, CONTRACTOR shall repair or replace the defective goods, as required by METRO, at CONTRACTOR's expense, within thirty (30) days of written notice. Alternatively, METRO may return the defective goods, at CONTRACTOR's expense, for a full refund. Exercise of either option shall not relieve CONTRACTOR of any liability to METRO for damages sustained by virtue of CONTRACTOR's breach of warranty.

9.3. Software License

CONTRACTOR warrants and represents that it is the owner of or otherwise has the right to and does hereby grant METRO a license to use any software provided for the purposes for which the software was obtained or proprietary material set forth in METRO's solicitation and/or CONTRACTOR's response to the solicitation.

9.4. Confidentiality

Tennessee Code Annotated §10-7-504(i) specifies that information which would allow a person to obtain unauthorized access to confidential information or to government property shall be maintained as confidential. "Government property" includes electronic information processing systems, telecommunication systems, or other communications systems of a governmental entity subject to this chapter. Such records include: (A) Plans, security codes, passwords, combinations, or computer programs used to protect electronic information and government property; (B) Information that would identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, the services provided by a governmental entity; and (C) Information that could be used to disrupt, interfere with, or gain unauthorized access to electronic information or government property.

The foregoing listing is not intended to be comprehensive, and any information which METRO marks or otherwise designates as anything other than "Public Information" will be deemed and treated as sensitive information, which is defined as any information not specifically labeled as "Public Information". Information which qualifies as "

sensitive information" may be presented in oral, written, graphic, and/or machine-readable formats. Regardless of presentation format, such information will be deemed and treated as sensitive information.

CONTRACTOR, and its Agents, for METRO, may have access to sensitive information. CONTRACTOR, and its Agents, are required to maintain such information in a manner appropriate to its level of sensitivity. All sensitive information must be secured at all times including, but not limited to, the secured destruction of any written or electronic information no longer needed. The unauthorized access, modification, deletion, or disclosure of any METRO information may compromise the integrity and security of METRO, violate individual rights of privacy, and/or constitute a criminal act.

Upon the request of METRO, CONTRACTOR shall return all information in whatever form. In the event of any disclosure or threatened disclosure of METRO information, METRO is further authorized and entitled to immediately seek and obtain injunctive or other similar relief against CONTRACTOR, including but not limited to emergency and ex parte relief where available.

9.5. Information Ownership

All METRO information is and shall be the sole property of METRO. CONTRACTOR hereby waives any and all statutory and common law liens it may now or hereafter have with respect to METRO information. Nothing in this Contract or any other agreement between METRO and CONTRACTOR shall operate as an obstacle to such METRO's right to retrieve any and all METRO information from CONTRACTOR or its agents or to retrieve such information or place such information with a third party for provision of services to METRO, including without limitation, any outstanding payments, overdue payments and/or disputes, pending legal action, or arbitration. Upon METRO's request, CONTRACTOR shall supply METRO with an inventory of METRO information that CONTRACTOR stores and/or backs up.

9.6. Information Security Breach Notification

In addition to the notification requirements in any Business Associate Agreement with METRO, when applicable, CONTRACTOR shall notify METRO of any data breach within 24 hours of CONTRACTOR's knowledge or reasonable belief (whichever is earlier) that such breach has occurred ("Breach Notice") by contacting the METRO ITS Help Desk. The Breach Notice should describe the nature of the breach, the scope of the information compromised, the date the breach occurred, and the identities of the individuals affected or potentially affected by the breach as well as specific information about the data compromised so that METRO can properly notify those individuals whose information was compromised. CONTRACTOR shall periodically update the information contained in the Breach Notice to METRO and reasonably cooperate with METRO in connection with METRO's efforts to mitigate the damage or harm of such breach.

9.7. Virus Representation and Warranty

CONTRACTOR represents and warrants that Products and/or Services, or any media upon which the Products and/or Services are stored, do not have, nor shall CONTRACTOR or its Agents otherwise introduce into METRO's systems, network, or infrastructure, any type of software routines or element which is designed to or capable of unauthorized access to or intrusion upon, disabling, deactivating, deleting, or otherwise damaging or interfering with any system, equipment, software, data, or the METRO network. In the event of a breach of this representation and warranty, CONTRACTOR shall compensate METRO for any and all harm, injury, damages, costs, and expenses

incurred by METRO resulting from the breach.

For CONTRACTOR managed systems, CONTRACTOR shall install and maintain ICSA Labs certified or AV-Test approved Antivirus Software and, to the extent possible, use real time protection features. CONTRACTOR shall maintain the Anti-virus Software in accordance with the Antivirus Software provider's recommended practices. In addition, CONTRACTOR shall ensure that:

- Anti-virus Software checks for new Anti-virus signatures no less than once per day, and;
- Anti-virus signatures are current and no less recent than two versions/releases behind the most current version/release of the Anti-virus signatures for the Anti-virus Software

9.8. Copyright, Trademark, Service Mark, or Patent Infringement

CONTRACTOR shall, at its own expense, be entitled to and shall have the duty to defend any suit that may be brought against METRO to the extent that it is based on a claim that the products or services furnished infringe a Copyright, Trademark, Service Mark, or Patent. CONTRACTOR shall further indemnify and hold harmless METRO against any award of damages and costs made against METRO by a final judgment of a court of last resort in any such suit. METRO shall provide CONTRACTOR immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority to enable CONTRACTOR to do so. No costs or expenses shall be incurred for the account of CONTRACTOR without its written consent. METRO reserves the right to participate in the defense of any such action. CONTRACTOR shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement or compromise shall be binding upon METRO unless approved by the METRO Department of Law Settlement Committee and, where required, the METRO Council.

If the products or services furnished under this Contract are likely to, or do become, the subject of such a claim of infringement, then without diminishing CONTRACTOR's obligation to satisfy the final award, CONTRACTOR may at its option and expense:

- Procure for METRO the right to continue using the products or services
- Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to METRO, so that they become non-infringing
- Remove the products or discontinue the services and cancel any future charges pertaining thereto

Provided; however, that CONTRACTOR will not exercise the Remove option above until CONTRACTOR and METRO have determined that the Procure and/or Replace options are impractical. CONTRACTOR shall have no liability to METRO; however, if any such infringement or claim thereof is based upon or arises out of:

- The use of the products or services in combination with apparatus or devices not supplied or else approved by CONTRACTOR;
- The use of the products or services in a manner for which the products or services were neither designated nor contemplated; or,
- The claimed infringement in which METRO has any direct or indirect interest by license or otherwise, separate from that granted herein.

9.9. Maintenance of Records

CONTRACTOR shall maintain documentation for all charges against METRO. The books, records, and documents of CONTRACTOR, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by METRO or its duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles. In the event of litigation, working papers and other documents shall be produced in accordance with applicable laws and/or rules of discovery. Breach of the provisions of this paragraph is a material breach of this Contract.

All documents and supporting materials related in any manner whatsoever to this Contract or any designated portion thereof, which are in the possession of CONTRACTOR or any subcontractor or subconsultant shall be made available to METRO for inspection and copying upon written request from METRO. Said documents shall also be made available for inspection and/or copying by any state, federal or other regulatory authority, upon request from METRO. Said records include, but are not limited to, all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the procurement and/or performance of this Contract. Said records expressly include those documents reflecting the cost, including all subcontractors' records and payroll records of CONTRACTOR and subcontractors.

9.10. Monitoring

CONTRACTOR's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by METRO, the Department of Finance, the Division of Internal Audit, or their duly appointed representatives.

METRO shall have the option of reviewing and performing a security assessment of the information security management practices of CONTRACTOR. METRO shall have the right, at its expense, during normal business hours and with reasonable advance notice, to evaluate, test, and review at CONTRACTOR's premises the Products and/or Services to ensure compliance with the terms and conditions of this Contract. METRO shall have the right to conduct such audits by use of its own employees and internal audit staff, or by use of outside consultants and auditors.

9.11. METRO Property

Any METRO property, including but not limited to books, records, and equipment that is in CONTRACTOR's possession shall be maintained by CONTRACTOR in good condition and repair, and shall be returned to METRO by CONTRACTOR upon termination of this Contract. All goods, documents, records, and other work product and property produced during the performance of this Contract are deemed to be METRO property. METRO property includes, but is not limited to, all documents which make up this Contract; all other documents furnished by METRO; all conceptual drawings, design documents, closeout documents, and other submittals by CONTRACTOR; and, all other original works of authorship, whether created by METRO or CONTRACTOR embodied in any tangible medium of expression, including, without limitation, pictorial, graphic, sculptural works, two (2) dimensional works, and three (3) dimensional works.

Except as to Contracts involving sensitive information, CONTRACTOR may keep one (1) copy of the aforementioned documents upon completion of this Contract; provided, however, that in no event shall CONTRACTOR use, or permit to be used, any portion of the documents on other projects without METRO's prior written authorization. CONTRACTOR shall maintain sensitive information securely and if required by METRO, provide secured destruction of said information. Distribution and/or reproduction of METRO sensitive information outside of the intended and approved use are strictly prohibited unless permission in writing is first received from

the METRO Chief Information Security Officer. The storage of METRO sensitive information to third-party hosted network storage areas, such as Microsoft Skydrive, Google Docs, Dropbox, or other cloud storage mechanisms, shall not be allowed without first receiving permission in writing from the METRO Chief Information Security Officer .

9.12. Modification of Contract

This Contract may be modified only by written amendment executed by all parties and their signatories hereto. All change orders, where required, shall be executed in conformance with section 4.24.020 of the Metropolitan Code of Laws.

9.13. Partnership/Joint Venture

This Contract shall not in any way be construed or intended to create a partnership or joint venture between the Parties or to create the relationship of principal and agent between or among any of the Parties. None of the Parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No Party shall become liable for any representation, act, or omission of any other Party contrary to the terms of this Contract.

9.14. Waiver

No waiver of any provision of this Contract shall affect the right of any Party to enforce such provision or to exercise any right or remedy available to it.

9.15. Employment

CONTRACTOR shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, or which is in violation of applicable laws concerning the employment of individuals with disabilities.

CONTRACTOR shall not knowingly employ, permit, dispatch, subcontract, or instruct any person who is an undocumented and/or unlawful worker to perform work in whole or part under the terms of this Contract.

Violation of either of these contract provisions may result in suspension or debarment if not resolved in a timely manner, not to exceed ninety (90) days, to the satisfaction of METRO.

9.16. Compliance with Laws

CONTRACTOR agrees to comply with all applicable federal, state and local laws and regulations.

9.17. Taxes and Licensure

CONTRACTOR shall have all applicable licenses and be current on its payment of all applicable gross receipt taxes and personal property taxes.

9.18. Ethical Standards

CONTRACTOR hereby represents that CONTRACTOR has not been retained or retained any persons to solicit or secure a METRO contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Breach of the provisions of this paragraph is, in addition to a breach of this Contract, a breach of ethical standards, which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under METRO contracts.

9.19. Indemnification and Hold Harmless

CONTRACTOR shall indemnify and hold harmless METRO, its officers, agents, and employees from:

- A. Any claims, damages, costs, and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of CONTRACTOR, its officers, employees, and/or agents, including its sub or independent contractors, in connection with the performance of the contract.
- B. Any claims, damages, penalties, costs, and attorney fees arising from any failure of CONTRACTOR, its officers, employees, and/or agents, including its sub or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
- C. In any and all claims against METRO, its officers, agents, or employees, by any employee of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any subcontractor under workers' compensation acts, disability acts, or other employee benefit acts.
- D. METRO will not indemnify, defend, or hold harmless in any fashion CONTRACTOR from any claims arising from any failure, regardless of any language in any attachment or other document that CONTRACTOR may provide.
- E. CONTRACTOR shall pay METRO any expenses incurred as a result of CONTRACTOR's failure to fulfill any obligation in a professional and timely manner under this Contract.

9.20. Attorney Fees

CONTRACTOR agrees that in the event either party takes legal action to enforce any provision of this Contract or to obtain a remedy for any breach of this Contract, and in the event METRO prevails in such action, CONTRACTOR shall pay all expenses of such action incurred at any and all stages of the litigation, including costs, and reasonable attorney fees for METRO.

9.21. Assignment--Consent Required

The provisions of this Contract shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to CONTRACTOR under this Contract, neither this Contract nor any of the rights and obligations of CONTRACTOR hereunder shall be assigned or transferred in whole or in part without the prior written consent of METRO. Any such assignment or transfer shall not release CONTRACTOR from its obligations hereunder.

NOTICE OF ASSIGNMENT OF ANY RIGHTS TO MONEY DUE TO CONTRACTOR UNDER THIS CONTRACT MUST BE SENT TO THE ATTENTION OF:

METRO'S CHIEF ACCOUNTANT

**DIVISION OF ACCOUNTS
DEPARTMENT OF FINANCE
PO BOX 196300
NASHVILLE, TN 37219-6300**

Funds Assignment Requests should contain complete contact information (contact person, organization name, address, telephone number, and email) for METRO to use to request any follow up information needed to complete or investigate the requested funds assignment. To the extent permitted by law, METRO has the discretion to approve or deny a Funds Assignment Request.

9.22. Entire Contract

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.

9.23. Force Majeure

No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

9.24. Governing Law

The validity, construction, and effect of this Contract and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that CONTRACTOR may provide.

9.25. Venue

Any action between the Parties arising from this Contract shall be maintained in the courts of Davidson County, Tennessee.

9.26. Severability

Should any provision of this Contract be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this Contract.

[BALANCE OF PAGE IS INTENTIONALLY LEFT BLANK]